

(Adopted: 12/05/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77; Amended: 07/01/93)

RULE 501

General

This regulation shall apply to all hearings before the Hearing Board of the Mojave Desert Air Quality Management District.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(42)(xiii)(D); Approved 12/21/78. 43 FR 59489, 40 CFR 52.220(c)(4)(xiii)(A); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 01/01/82; Amended: 07/01/93)

RULE 501.1

Assistance to Small Business

Assistance will be provided to small businesses in filling out and filing of various petitions, developing compliance schedules, and in obtaining low-cost financing for air pollution control equipment needed to comply with the Rules and Regulations of the District.

Information can be obtained by calling:

MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT
15428 Civic Street Suite 200
Victorville, CA 92392
(619) 245-1661

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(51)(xix)(C); Approved 1/27/81, 46 FR 8471, 40 CFR 52.220(c)(51)(xii)]

RULE 502

Filing Petitions

- (a) Except as provided in Section (c), requests for hearings shall be initiated by serving one copy of a petition upon the Air Pollution Control Officer at the District Office, 15428 Civic Drive, Suite 200, Victorville, CA 92392. The original and five copies are then to be filed with the Clerk of the Hearing Board or a Deputy Clerk of the Hearing Board, along with the payment of the prescribed fee.
- (b) Petition shall be filed with the Clerk or Deputy Clerk of the Hearing Board at the following address:

Office of the Clerk of the Governing Board
15428 Civic Drive, Suite 200
Victorville, CA 92392
- (c) Requests by the Air Pollution Control Officer for hearing shall be initiated by serving one copy of the petition upon the holder of a permit or variance, if any. The original and five copies are to be filed with the Clerk of the Hearing Board or a Deputy Clerk of the Hearing Board.
- (d) Service may be made in person or by mail, and service may be proved by written acknowledgment of the person served or by affidavit of the person making the service.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(42)(xiii)(D); Approved 12/21/78. 43 FR 59489, 40 CFR 52.220(c)(4)(xiii)(A); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

RULE 503

Contents of Petitions

Every petition shall state:

- (a) The name, address, and telephone number of the petitioner, or other person authorized to receive service of notices.
- (b) Whether the petitioner is an individual, co-partnership, corporation or other entity, and names and addresses of the partners if a co-partnership, names and addresses of the persons in control, if other entity.
- (c) The type of business or activity involved in the application and the street address at which it is conducted.
- (d) A brief description of the article, machine, equipment or other contrivance, if any, involved in the application.
- (e) The section or rule under which the petition is filed; that is, whether petitioner desires a hearing:
 - 1. To determine whether a permit shall be revoked or suspended permit reinstated under Section 42307 Health and Safety Code of the State of California:
 - 2. For an emergency variance under Section 42359, Health and Safety Code:
 - 3. For a short variance under Section 40825, Health and Safety Code:
 - 4. For a regular variance and approval of a compliance schedule under Sections 40826 and 42358, Health and Safety Code:
 - 5. For an interim variance under Section 42351, Health and Safety Code, in conjunction with a petition for a short or regular variance:
 - 6. For a variance and/or approval of a compliance schedule for a rule not yet effective under Section 41703, Health and Safety Code:
 - 7. To revoke or modify a variance under Section 42356, Health and Safety Code:

8. To modify an increment of progress or a final compliance date under Section 42357, Health and Safety Code;
 9. To review the denial or conditional granting of a permit to construct, or permit to operate under Section 42302, Health and safety Code;
 10. For a rehearing under Section 40861, Health and Safety Code. A petition for rehearing shall specify the grounds on which petitioner seeks a rehearing.
- (f) Each petition shall be signed by the petitioner, or by some person on his behalf, and where the person signing is not the petitioner, it shall set forth his authority to sign.
 - (g) Petitions for revocation of permits shall allege, in addition, the rule under which permit was granted, the rule or section which is alleged to have been violated, together with a brief statement of the facts constituting such alleged violation.
 - (h) Petitions for reinstatement of suspended permits shall allege, in addition, the rule under which the permit was granted, the request and alleged refusal which formed the basis for such suspension, together with a brief statement as to why information requested, if any, was not furnished, whether such information is believed by petitioner to be pertinent and, if so, when it will be furnished.
 - (i) All petitions shall be typewritten, double-spaced, on letter-size paper, on one side of the paper only, leaving a margin of at least one inch at the top and left side of each sheet.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641; 40 CFR 52.220(c)(39)(ii)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C)]

Rule 504

Petitions for Variances

In addition to the matters required by Rule 503, petitions for variances shall state briefly:

- (a) The section, rule, or order from which a variance is sought.
- (b) The facts showing why compliance with the section, rule, or order is unreasonable.
- (c) For what period of time and dates the variance is sought.
- (d) The damage or harm which would result to petitioner from compliance with such section, rule, or order.
- (e) Except in a petition for an interim or emergency variance, a final compliance date specifying when petitioner will be in compliance with the section or rule from which a variance is sought.
- (f) If the final compliance date required in subsection (e) is one year or more after the date set for hearing (other than the hearing for an emergency or interim variance) then petitioner shall attach to his petition a proposed schedule of increments of progress as defined by Health and Safety Code Section 39051.
- (g) Both the advantages and disadvantages to the residents of the District resulting from requiring compliance or resulting from granting a variance.
- (h) Whether or not any case involving the same identical equipment or process is pending in any court, civil or criminal.
- (i) Whether or not the subject equipment or process is covered by a permit to operate issued by the Air Pollution Control Officer, whether or not such permit has been denied or revoked, or whether the subject equipment is exempt from permit requirements.
- (j) Whether the subject equipment was constructed in conformance with an authority to construct, or whether the subject equipment is exempt from such requirement.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(32)(iv)(A) and 40 CFR 52.220(c)(39)(ii)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(32)(iv)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

RULE 505

Appeal From Denial

A petition to review a denial or conditional approval of an authority to construct, permit to operate or permit to sell or rent shall, in addition to the matters required by Rule 503, set forth a summary of the application or a copy thereof and the alleged reasons for the denial or conditional approval and the reasons for appeal.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(32)(iv)(A) and 40 CFR 52.220(c)(39)(ii)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(32)(iv)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

Rule 506

Failure to Comply with Rule

The Clerk of the Hearing Board shall not accept for filing any petition which does not comply with these Rules relating to the form, filing, and service of petitions unless the chairman or any three members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The chairman or any three members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

RULE 507

Pleadings

Any person may file a written answer, other responsive pleading, memorandum, or brief not less than five days before the hearing. Said documents shall be served the same as petitions under Rule 502.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(ii)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(37)(I)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

RULE 508

Dismissal of Petition

The petitioner may dismiss his petition at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such dismissal.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted: 07/25/77; Amended: 01/04/82)

Rule 509

Place of Hearing

Hearings shall be held in facilities as arranged for by the Air Pollution Control Officer. The Hearing Board, by vote of its members, shall establish a schedule of meeting times and locations. Except when otherwise determined by the Hearing Board and indicated in notices of hearings as specified below, hearings shall be held at Board Room, City of Victorville, 15428 Civic Drive, Suite 200, Victorville, California, 92392. Petitions for emergency and interim variances may be heard wherever the Hearing Board is sitting.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(42)(xiii)(D); Approved 12/21/78. 43 FR 59489, 40 CFR 52.220(c)(4)(xiii)(A); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

RULE 510

Notice of Hearing

The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the Air Pollution Control Officer, the holder of the permit or variance involved, if any, and to any person entitled to notice under Division 26, Health and Safety Code.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(42)(xiii)(D); Approved 12/21/78. 43 FR 59489, 40 CFR 52.220(c)(4)(xiii)(A); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

Rule 511

Evidence

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- (d) The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements at the hearing; however, it is desirable that written statements be submitted to the Hearing Board five days before the hearing. Statements need not conform to formal rules of evidence, nor with subsections a, b, and c of this rule. The chairman may impose reasonable limits on the duration of oral presentations.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77;
Readopted: 07/25/77)

RULE 512

Preliminary Matters

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman or any three members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted:
07/25/77; Amended: 01/04/82)

Rule 513

Official Notice

The Hearing Board may take official notice of any matters which may be judicially noticed by the courts of this State.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted: 07/25/77; Amended: 01/04/82)

Rule 514

Continuances

The chairman or any three members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by petitioner, the Air Pollution Control Officer and by every person who has filed an answer in the action and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted: 07/25/77; Amended: 01/04/82)

Rule 515

Decision

The decision shall be reduced to writing, served and filed within 30 days after submission of the cause by the parties thereto, and shall contain a brief statement of facts found to be true, the determination of the issues presented, findings, and the order of the Hearing Board. A copy shall be mailed or delivered to the Air Pollution Control Officer, the petitioner, and to every person who has filed pleadings or who has appeared as a party in person or by counsel at the hearing. A copy of any decision granting, modifying, or otherwise affecting a variance shall be mailed to the State Air Resources Board within 30 days after the effective date of the decision.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted: 07/25/77; Amended: 01/04/82)

Rule 516

Effective Date of Decision

Unless otherwise ordered, the decision of the Hearing Board shall become effective upon the concurring vote of three or more of its members.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B) and 40 CFR 52.220(c)(39)(iv)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iv)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/5/75; CARB Ex. Ord. G-73: 02/01/77; Readopted: 07/25/77; Amended: 01/04/82)

Rule 517

Lack of Permit

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any article, machine, equipment or other contrivance until a permit to operate has been granted and is in effect, or has been denied by the Air Pollution Control Officer, or unless such equipment is exempt from permit requirements.

A variance granted by the Hearing Board after a denial of a permit to operate by the Air Pollution Control Officer may include a permit to operate for the duration of the variance.

The provisions of this rule shall not apply to a petition filed by the Air Pollution Control Officer or by or with respect to the facilities of the Federal Government or the State of California or their respective agencies or departments.

The provisions of this rule shall not apply to a petition for a variance sought for the purpose of testing or operating trials if the equipment to be tested or operated has been constructed under a valid authority to construct.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Deleted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(x)(A)]

Rule 518

Findings

No variance shall be granted unless the Hearing Board makes all of the following findings:

- (1) That the petitioner is or will be in violation of any rule, regulation or order of the Air Pollution Control Board (or applicable section of the California State Health and Safety Code).
- (2) That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
 - (a) An arbitrary or unreasonable taking of property, or
 - (b) The practical closing and elimination of a lawful business.
- (3) That such closing or taking would be without a corresponding benefit in reducing air contaminants.
- (4) In the case of a regular variance, as defined in Rule 503(e), that the variance granted will not prevent the attainment or maintenance of any applicable national ambient air quality standard.

[SIP: Deletion challenged U.S. 9th Cir. Case #97-71117; Delted 6/27/97, 62 FR 34641, 40 CFR 52.220(c)(39)(ii)(F); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(ii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(37)(I)(A)]

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